

REMARKS

Claims 1-9 were examined. Claims 10-12 are added. Claims 1-12 remain in the application.

The Patent Office rejects claims 1-9 under 35 U.S.C./103(a). Reconsideration of the rejected claims is requested in view of the following remarks.

A. 35 U.S.C./103(b) Rejection of Claim 1-5

The Patent Office rejects claims 1-5 under 35 U.S.C./103(b) as obvious over U.S. Patent No. 5,427,556 issued to Frippiat et al (Frippiat) in view of French application No. 2778849 of Christine (Christine). The Patent Office directs Applicants' attention to column 20, lines 35-44 and 56-64 of Frippiat where a composition containing inulin and a second soluble fiber which is xanthan, carob, carboxymethylcellulose, carrageenan, or alginate. The Patent Office states that Christine discloses the use of a 5 percent concentration of arabinoxylnes.

Independent claim 1 relates to a composition, including an amount of a first soluble fiber comprising inulin and a second soluble fiber wherein the composition is a beverage with a specific viscosity, 1.4 centipoise or less. One reason for this limited viscosity range is to preserve mineral absorption after consumption of the beverage. .

Claim 1 is prima facie not obvious over the cited references, because the references fail to describe a viscosity of 1.4 centipoise or less.

There is similarly no motivation from the cited references to combine two soluble fibers at a viscosity of 1.4 or less. Christine is cited for this motivation by the use of 5% arabinoxylnes. Assuming for doctrine of equivalent purposes that arabinoxylnes and inulin are equivalent components,¹ it does not necessarily follow that because Christine describes a

¹ Christine refers to arabinoxylnes that, according to Applicants' representative's research is a primary component of wheat and rice bran. Inulin is a fructose polymer isolated principally from Chicory root.

composition having 5% arabinoxlanes, the composition has a viscosity of 1.4 centipoise or less. In addition, with all due respect to the Patent Office, Christine was not provided in English. It is therefore difficult for Applicants to have a full understanding of the reference at this time. Applicants would appreciate a more detailed explanation from the Patent Office about Christine and caution that often, the translation of a document by a person outside of the language and the art results in a misunderstanding of the disclosed material.

The Patent Office rejects claims 1-5 as obvious over U.S. Patent No. 5,169,671 issued to Harada et al (Harada) in view of Christine. Harada discloses a polyfructan drink. Here, Harada utilizes the polyfructan that could be inulin as a bulking agent to add *mass and volume* to generate a lower calorie consumable without affecting flavor. Harada fails to address maintenance of low viscosity on the order of 1.4 centipoise or less. In fact, increased viscosity is sought after as well as tough texture. The polyfructan in Harada is used to generate a smooth consistency of a solid somewhat similar to peanut butter without a bitter taste. The motivation behind the combination of Harada and Christine appears to be toward a high viscosity beverage, not a viscosity of 1.4 or less as Applicants claim 1.

The Patent Office rejects claims 1-7 as obvious over U.S. Patent No. 6,248,390 issued to Stillman et al (Stillman) in view of Christine. Stillman describes a beverage that contains inulin and guar gum (col. 15, lines 60-66). Stillman discloses a beverage containing one or more fiber sources to be used as bulking agents to maintain the health of patients. These "fiber-water" compositions may be used in patients restricted to bed recovery in order to provide the proper amount of fiber for regularity of bowel health etc. Stillman fails to address the importance of the balance of the fibers as in claim 1 whereby the overall viscosity of the composition is specified. The fiber concentrations in the beverages are decided but the final viscosity of the beverages is not. There is no motivation from the combination of Stillman and Christine toward a limited viscosity composition of soluble fibers.

For the above reasons, independent claim 1 is not obvious over the cited references. Claim 2 and 5 depend from claim 1 and therefore contain all the limitations of that claim. Therefore, claim 2-5 are not obvious over the cited references.

B. 35 U.S.C./103(b): Rejection of Claims 6 & 7

The Patent Office rejects claim 6 and claim 7 as obvious over Frippiat, Hirada, or Stillman in view of Christine for the reasons stated above with respect to claims 1-5 and that compositions for human consumption include ingredients that are food safe.

Independent claim 6 relates to a method including administering a beverage composition comprising a first soluble fiber comprising inulin and a second soluble fiber. The composition has a viscosity on the order of 1.4 centipoise or less. The composition would not necessarily be a beverage but could be a solid or a powder used to form a beverage in a method of administering a beverage comprising two soluble fiber components.

Claim 6 is not prima facie obvious because the Patent Office fails to describe a solubilized dual fiber composition with a limited viscosity in the form of a beverage for human consumption. As noted above, none of the references recite administering a beverage of the claimed viscosity. Further, there is no motivation from the various combination of references to administer a beverage of the claimed viscosity. To the extents any conclusions regarding motivation may be drawn from the cited references, particularly Harada/Christine and Stillman/Christine, the motivation is toward administering a high viscosity beverage.

For the above stated reasons, independent claim 6 is not obvious. Claim 7 depends from claim 6 and therefore contains all the limitations of that claim. For at least stated with respect to claim 6, claim 7 is not obvious.

C. 35 U.S.C./103 (a): Rejection of Claims 8 and 9

The Patent Office rejects claims 8 and 9 as obvious over Frippiat or Harada or Stillman in view of Christine and further in view of U.S. Patent No. _____ Green et al (Green). Green is cited for describing a dried mixture of fibers and oligosaccharides that may be added to water. Applicants request an appropriate citation to Green.

From the cited reference, there is no motivation for the method described by independent claim 6. Claim 8 and 9 depend from claim 6 and therefore contain all the

limitations of that claim. For at least stated with respect to claim 6, claims 8 and 9 are not obvious over the cited references.

Applicants respectfully request that the rejection under 35 U.S.C./103(a) be withdrawn.

D. New Claims 10-12

Applicants include herewith for consideration, new claims 10-12 related to compositions. Support for claim 10 may be found in the application at, for example, pages 4-5. Support for claim 11 may be found, for example at page 5. Support for claim 12 may be found, for example, in Tables 1-3 (pgs. 7-8) where amount of inulin (4.4 g) relative to maltodextron (13 g) is 0.33.

Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Invitation for a Telephone Interview

The Patent Office is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Respectfully submitted,

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Date: 12.17.2002



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on December 17, 2002.


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